

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS ANTONIO TZUN-MAGANA,

Defendant.

Case No. [21-cr-00306-EMC-1](#)

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS**

Docket No. 32

Defendant Luis Antonio Tzun-Magana is a citizen of Mexico who has been twice removed from the United States in 2015 and 2017. Compl. ¶¶ 8, 16. Following his most recent removal, Mr. Tzun-Magana again entered the United States, was arrested for a domestic violence incident, and came to the attention of immigration authorities. Compl. ¶ 18. A grand jury indicted him for illegal reentry following a prior removal, in violation of 8 U.S.C. § 1326(a) & (b)(2). Compl. at 1. On January 26, 2022, Mr. Tzun-Magana moved to dismiss the indictment on the grounds that § 1326 violates the Equal Protection Clause of the Fifth Amendment. Docket No. 32.

The Ninth Circuit considered and rejected the same arguments raised by Mr. Tzun-Magana regarding the unconstitutionality of 8 U.S.C. § 1326 in *Carrillo-Lopez v. United States*, 68 F.4th 1133 (9th Cir. 2023).<sup>1</sup> On January 22, 2024, the Supreme Court denied Mr. Carrillo-Lopez's petition for writ of certiorari. *Carrillo-Lopez v. United States*, 144 S. Ct. 703 (2024). Accordingly, the Court **DENIES** Mr. Tzun-Magana's Motion to Dismiss.

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<sup>1</sup> Indeed, the parties in this action stipulated that *Carrillo-Lopez* concerned "the same issue" as the present motion. Dkt. No. 56.

1 This order disposes of Docket No. 32.

2 The parties are further ordered to appear for a status conference on **May 29, 2024, at 1:30**  
3 **p.m.**, in Courtroom 5, 17th Floor, 450 Golden Gate Avenue, San Francisco. A joint status report  
4 is to be filed one week prior to the status conference.

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6 **IT IS SO ORDERED.**

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8 Dated: May 9, 2024

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11 EDWARD M. CHEN  
12 United States District Judge  
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